



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1996

Mr. Rick Ybarra
Assistant Attorney General
Open Records Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR96-0431

Dear Mr. Ybarra:

You have asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38900.

The Office of the Attorney General of the State of Texas ("OAG") received a request for information about the OAG's investigation of two psychiatric centers. You contend that the information at issue is excepted from disclosure pursuant to sections 552.101, 552.107(1), and 552.111 of the Government Code. You submitted to this office for review representative samples of the information at issue, in envelopes labeled "A" and "B."¹

Section 552.101 excepts from disclosure information made confidential by law. You assert that Envelope A contains information made confidential by law. Envelope A contains sample information apparently produced pursuant to a civil investigative demand

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

("CID"). Section 17.61 of the Business and Commerce Code authorizes the OAG's consumer protection division to serve, on a person it believes may be in possession of documentary material relevant to an investigation of a possible violation of the Deceptive Trade Practices-Consumer Protection Act, a CID requiring the person to produce the documentary material. Section 17.61(f) of the Business and Commerce Code, which generally prohibits the disclosure of documentary material produced pursuant to a CID, provides in relevant part:

No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material.

The OAG thus must withhold from disclosure the documentary material that the consumer protection division obtained pursuant to a CID.² Gov't Code § 552.101.

Envelope B contains legal memoranda exchanged between OAG attorneys or between OAG attorneys and OAG law clerks. You assert that these documents are excepted from required public disclosure pursuant to sections 552.107(1) and 552.111 of the Government Code. Section 552.107(1) applies only to information that reveals attorney advice, opinion, and recommendation or client confidences. *See* Open Records Decision No. 574 (1990). We have marked the information in Envelope B that is excepted from disclosure pursuant to section 552.107(1).

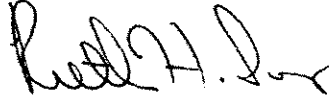
Section 552.111 excepts from disclosure a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* In this situation, the scope of protection under section 552.111 is no greater than that provided pursuant to section 552.107(1). The information we have marked as not being protected from disclosure must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous

²Since you have not told us to the contrary, we assume the individual or individuals who produced the information in response to the CID have not consented to the release of the information.

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 38900

Enclosures: Marked documents

cc: Mr. Kelly Tidwell
Patton, Tidwell, Sendefur & Paddock
4122 Texas Boulevard
Post Office Box 1897
Texarkana, Arkansas, Texas 75504
(w/o enclosures)